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***Ebony Weaver v. Kenneth Solone***

Judicial District of Waterbury

FA-98-0160460

September 7, 2006

Wihbey, F.S.M.

*Syllabus*

**Motion to Open and Vacate Judgment of Paternity. Genetic Testing/DNA. Temporary Assistance to Needy Families (TANF). Best Interests of the Child. Preservation of the Family. Equitable Estoppel.**

When the petitioner initially claimed that the respondent had refused and neglected to admit paternity of her eight-year old daughter, the respondent appeared but denied that he was the father. He requested genetic testing and stated that he was able to pay for it because he was employed. He failed, however, to have the tests performed. He subsequently failed to appear and the court entered a default judgment of paternity. The court set a support order of \$102 per week, based on the amount of state cash assistance given to the mother. The court also found that he owed the state \$6,095 in past due support. The respondent sought to "disestablish" his paternity or vacate the judgment of paternity based on recent genetic testing that excluded him as the child's biological father. The testing was related to medical issues faced by the respondent's children, one of whom died as a result of a genetic heart disorder and another who presently suffers from the disorder. The respondent claimed that the judgment of paternity had been obtained by default and was based on a mutual mistake of the parties. Now that he has undergone DNA testing and has been excluded as the biological father, the respondent wishes to be excused from his financial obligations to the child. The mother did not object to test results and has named her present husband, the child's step-father, as the biological father. She opposes the motion to open, however, because she believes that it is in the child's best interests to continue her relationship with the respondent. The mother also claims that the child would be confused if she were to learn the truth about her parentage. The state and the attorney for the child opposed the motion. The state argued that it had an interest in preserving a seven-year old judgment and the continued collection of support and arrearages owed to the state by virtue of TANF payments made to the mother. It also argued that equitable estoppel and laches precluded the granting of the respondent's motion. The child's attorney claimed the judgment should not be disturbed because the child knows the respondent as her father. Without any Connecticut statutes or appellate law to guide its decision, the court looked to cases from other jurisdictions. While noting that some states allow biology alone to dictate child support liability, the court ruled that DNA must be considered in balance with the best interests of the child when determining parental rights and obligations. The court set forth five factors that it believes must all be considered in these cases: (1) the genetic information available, (2) the past relationship between the adjudicated father and the child, (3) the

child's future interests that stem from knowledge of her parental biology, including the adjudicated father's family medical history, future legal rights such as inheritance, life insurance benefits, social security benefits and possible sibling relationships, (4) the child's ability to receive emotional and financial support from her biological father, and (5) any potential harm that the child may suffer by disturbing the paternity judgment, such as loss of parental relationship and financial support. The court found that the adjudicated father had assumed the role of noncustodial father and had developed a stable relationship with the child. The child believes that the respondent is her father and has a good relationship with his family. The court found that these relationships would continue even if the judgment was disturbed. In addition, the step-father has been living in the child's home and providing for her. More importantly, the court found, was the fact that the DNA tests revealed that the respondent had passed on a fatal genetic disorder to his children. The court found, therefore, that the child has a right to know her true genetic history. It decided, however, that vacating the paternity judgment at this time might be disruptive to the child and would discount the adjudicated father's obligation to the child, which he has honored. The court noted that the parties or the child could move to terminate the respondent's parental rights at some future date if they deemed it appropriate. Such termination would allow a court to order the biological father to pay support. Based on the respondent's failure to participate in the initial paternity proceedings and his failure to undergo DNA testing at that time, the court held that he was estopped from denying paternity. The court ruled, however, that he no longer had an obligation to provide current support and reduced the support order to zero. Finally, the court ordered him to pay \$35 per week toward the arrearage on past due support.

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FA98-0160460

STATE OF CONNECTICUT

EBONY WEAVER

JUDICIAL DISTRICT OF  
WATERBURY

V

Family Magistrate Session

KENNETH SOLONE

September 7, 2006

**MEMORANDUM OF DECISION  
MOTION TO OPEN, #113**

The Respondent is the adjudicated father of 8 year old Essence. He seeks to “disestablish” his paternity because he recently obtained genetic testing excluding him as the biological father.<sup>1</sup> Tragically, the father’s eldest child was diagnosed with a fatal genetic heart disorder. Because of the medical needs of his family, the father and his children submitted to diagnostic medical testing. As a result of the testing performed, the father learned that he was not Essence’s biologic parent. The mother does not dispute the genetic test results. She has identified her husband, Essence’s step-father, as the biological father.<sup>2</sup> She does oppose the motion to open because she believes that it is in the child’s best interests for the child to continue her relationship with her legal father, the respondent. The mother also asserts that if the child were to learn that the Respondent is not her father, and that her step-father is her biologic father, the child would be confused.<sup>3</sup>

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<sup>1</sup> Respondent’s Amended [sic] Motion to Open and Vacate Judgment of Paternity, Order to Show Cause, dated March 1, 2006, entry # 114, requests that the judgment of paternity be opened claiming that the judgment was entered by default and was based on mutual mistake of the parties. The Motion alleges that it would be inequitable to continue to charge child support and that it is “in the best interests of the child for her to know which man is and which man is not her biological father.” Paragraphs 5-7.

<sup>2</sup> Transcript, Hearing May 18, 2006, p. 18.

<sup>3</sup> Transcript, p. 21, lines 3-5 “I don’t think she is old enough to handle that mentally right now.”

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The State of Connecticut and the court appointed attorney for the child oppose disestablishment. The State opposes the motion based upon its interest in preserving a 7 year old judgment, and its interest in the continued collection of current support and the collection of arrearage owed to the State.<sup>4</sup> The State claims that the application of equitable estoppel and laches apply and are often overlooked by the court. The court appointed attorney for the child opines that because the child knows the Respondent as her father, the judgment should not be disturbed.<sup>5</sup> He also argues that the principle of *res judicata* should apply, preventing re-litigation of the paternity judgment.

#### **Historical Background:**

The Respondent is an “adjudicated legal father” of the minor child Essence, born on December 30, 1997. He was not married to the mother at the time of the child’s birth. The mother began receiving State benefits, including cash assistance through the Temporary Aid to Needy Families (TANF) program when Essence was born. The Respondent did not voluntarily acknowledge that he was the father of Essence. Therefore, the State, through the Commissioner of Social Services, served the Respondent with a summons and petition, claiming that he had refused and neglected to admit his paternity of Essence.<sup>6</sup>

The paternity proceeding was initiated pursuant to Title IV-D of the Social Security Act, enacted by Congress in 1974. This Act required all welfare recipients to assign their rights to child support to the state to offset welfare costs of the federal

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<sup>4</sup> Transcript, p. 28.

<sup>5</sup> Transcript, pp.5-6. The attorney for the minor child made his recommendation based upon his personal opinion of the child’s best interests because he determined that the child lacked capacity to state her actual wishes.

<sup>6</sup> Verified Paternity Petition, para. 6.

government.<sup>7</sup> Because identifying the non-custodial parent is the initial step in child support enforcement, welfare recipients are required to cooperate in the identification of the non-custodial parent.<sup>8</sup>

In 1988, Congress enacted the Family Support Act. This Act requires that each state establish a minimum number of paternity declarations or face financial penalties.<sup>9</sup> Federal efforts to increase and streamline paternity establishment continued through the Omnibus Reconciliation Act of 1993, declaring that “the first step in securing child support is the establishment of paternity.”<sup>10</sup> Finally, in 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA).<sup>11</sup> Under PROWRA, states risk losing federal monies and financial penalties if they fail to meet the federal goal of establishing paternity in 90% of welfare cases.

In its efforts to encourage paternity establishment, the federal legislature requires the mother seeking public assistance to cooperate in identifying the father of her child.<sup>12</sup> A mother’s failure to cooperate in identifying the putative father, without a showing of good cause, will result in a reduction of financial benefits, or a complete denial of assistance.<sup>13</sup> Specifically, mothers seeking TANF or Medicaid, must assign their child support rights, including distribution, to the state and cooperate in establishing paternity of their children.<sup>14</sup> If she fails to do so, the state must deduct a minimum of 25% from

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<sup>7</sup> 42 U.S.C. § 602(A)(26) (current version as amended, at 42 U.S.C. § 608 (A)(3)(1999).

<sup>8</sup> 42 U.S.C. § 654(20)(A) (Requiring that, as a condition for receiving child support, a parent must provide the name and such other information as the state may require with respect to the non-custodial parent.)

<sup>9</sup> Family Support Act of 1988, Pub.L.No. 485, 102 Stat. 2343, (Current version codified at 42 U.S.C. § 666-667 (2001).

<sup>10</sup> Employee Retirement Income and Security Act of 1974, 29 U.S.C. §§ 1021, 1144, 1169 (1994); 42 U.S.C. § 666(a)(5)(C)(ii).

<sup>11</sup> PROWRA, Pub.L.No.104-193, 110 Stat. 2105 (1996), codified at various sections of 42 U.S.C.

<sup>12</sup> 42 U.S.C. § 608(a)(2).

<sup>13</sup> 42 U.S.C. § 608 (a)(2)(A).

<sup>14</sup> 42 U.S.C. § 608(a)(2)(A)(B).

the family's cash assistance and may terminate the family's eligibility for benefits altogether. In addition, if the state does not enforce the financial penalties against the non-cooperating individual, the state will be penalized up to 5% of the State's total TANF block grant for the next fiscal year.<sup>15</sup>

Genetic testing is required only upon request and in certain contested cases.<sup>16</sup> In most court based paternity proceedings, paternity adjudications are resolved by consent or default without genetic testing. The United States Dept. of Health and Human Services, Office of the Inspector General, reported that in 4 focus states reviewed, half or more of all paternity judgments were entered by default.<sup>17</sup> Further, when a putative father does appear in court for adjudication, often he is not represented by counsel<sup>18</sup> and genetic testing is not a required element of proof. Notwithstanding the lack of required scientific proof to support the claimed paternity, 28-30% of those persons submitting to genetic testing are excluded as biological parents.<sup>19</sup> It has been suggested that the volume and routine nature of such cases lend towards a misunderstanding of the nature of the paternity proceeding and the rights and obligations associated with the judgment.<sup>20</sup>

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<sup>15</sup> 42 U.S.C. § 652(g) provides monetary incentives to the states maximizing paternity establishments. *See also*, Connecticut Annual Self Assessment Report, Oct. 1, 2004 – Sept. 30, 2005 reporting compliance with federal requirements that at least 75% of cases be completed within 6 months and 90% within 12 months; reporting 210,000 as the 'overall universe' of establishment cases in the IV-D program for the year reported. In 1997, Connecticut received \$325 million in federal TANF funds; 1998, it received \$278 million and in 2005, it received \$218 million and served 52,200 families. U.S. Dept. of Health and Human Services Annual Report of State TANF and MOE Programs; Legal Assistance Resource Center of Connecticut, "How Connecticut Spends Federal Temporary Assistance For Needy Families (TANF) Block Grant & Related State Maintenance of Effort (MOE) Funds", Jan. 2001.

<sup>16</sup> 42 U.S.C. § 666 (a)(5)(B)(i).

<sup>17</sup> Office of the Inspector General, U.S. Dept. of Health and Human Services, Paternity Establishment: Administrative and Judicial Methods (April 2000); Ronald Henry, "The Innocent Third party: Victims of Paternity Fraud", *Family Law Quarterly*, vol. 40, Spring 2006, pp. 56-58.

<sup>18</sup> Jane Murphy, "Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children", Berkley Electronic Press, 2004, p. 32, note 154 citing studies where 64-72% of parties in family matters appear pro se.

<sup>19</sup> American Association of Blood Banks Annual Report, Summer 2003.

<sup>20</sup> Stacy Brustin, "The Intersection Between Welfare Reform and Child Support Enforcement: D.C.'s weak Link" 52 *Catholic Univ. L. Rev.* 621, 643 (2003). For a 'zealous' and passionate discussion, *see* Ronald

What is universally accepted is that the majority of non-voluntary paternity adjudications are government initiated in the context of the welfare system. The adjudicated fathers are overwhelmingly low-income and disproportionately drawn from the minority communities.<sup>21</sup>

It is in this historic, legal context that the Respondent was summoned to appear and answer to the allegation that he refused and neglected to admit his paternity of the Essence. He appeared on the first court date pursuant to the summons, denied that he was the father and requested genetic testing.<sup>22</sup> In his Answer and Motion for Genetic Testing, he acknowledged his obligation to "prepay for the test by sending a certified check, money order or an attorney check to the testing laboratory of my choice." The father's ability to pay for the genetic test was based upon his statement that he was employed. He failed to appear thereafter and the court entered a judgment of paternity upon his default. A default order of child support in the amount of \$102 was ordered, based upon the amount of state cash benefits paid to the mother.<sup>23</sup> He was also found to

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Henry, "The Innocent Third party: Victims of Paternity Fraud", Family Law Quarterly, vol. 40, Spring 2006.

<sup>21</sup> Office of Support Enforcement, U.S. Dept. of Health and Human Services, "The Story Behind the numbers: Who Owes the Child Support Debt?", Informational Memorandum IM-04-04 at 1 (August. 13, 2004) ("Most child support debtors report little to no earnings; 63% of the debtors, holding 70% of the \$70 billion debt, had reported earnings of less than \$10,000."). Often earnings are imputed to calculate child support to 'discourage underreporting of income and to encourage full time employment'. Murphy, p. 34, note 161. "However, such policies when applied to the chronically unemployed, seasonal or other part time employment, result in unpayable support and increasing arrearage." *Id.* at note 162. Most often, as a defense to enforcement of financial orders, a non-custodial parent will seek to attack the underlying paternity judgment. The reasons are simple: 33.2% of non-custodial fathers are unable to pay court ordered child support due to their own poverty. *Id.* at 29. Many low income fathers have substandard education, lack marketable skills and often have criminal records that hinder employment. *Id.*

<sup>22</sup> Answer, dated June 16, 1998.

<sup>23</sup> G.L. §46b-215, in effect at the time of the paternity judgment provided, in relevant part, that upon default of an obligor to appear, a support order shall enter upon the State's payout of assistance. P.A. 03-258 amended Subsec. (a)(7)(B) by providing that child support due for periods prior to commencement of an action shall be "determined in accordance with the child support and arrearage guidelines established under Sec. 46b-215a, deleting the provision that child support be based on assistance rendered to the child, and adding that the if current ability to pay support is not known, then the court shall determine past ability to pay support based on obligor's work history, or if not known, on state's minimum wage in effect during

owe the State of Connecticut past support in the amount of \$6,095.<sup>24</sup> In 2000, the father moved, and was granted a decrease in his weekly support obligation to \$70. per week.<sup>25</sup>

The father now argues that he did not pay for the genetic testing because he could not afford the cost of the test at that time.<sup>26</sup> He claims that he accepted the judgment of paternity based on the mother's representations that he was the father. However, now that he knows that he is not the biological father of Essence, he wishes to be excused from his financial obligations to her, so that he may dedicate his limited financial resources to his other child that tragically suffers from the genetic disorder that caused the death of his eldest child.<sup>27</sup>

Should the Respondent be successful and his Motion to Open be granted, the State of Connecticut would be required to refund any money it collected and applied to the State's claim for reimbursement of cash assistance provided to the child.<sup>28</sup> In addition, the State asserts that it would be limited by statute to claim no more than 3 years of past due support on any future claim against the biological father.<sup>29</sup> As a result, the State would be hampered, if not prevented from collecting all of the past assistance provided to

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periods and that only actual earnings may be used to determine support for past periods during which obligor was a full-time high school student, incarcerated, institutionalized or incapacitated.

<sup>24</sup> Entry # 101, dated Jan. 19, 1999. Notice of the default order was not sent to the address where the Respondent was served or as identified as his residence on his appearance form. Rather, it was sent to the mother's address and returned to the court file as undelivered.

<sup>25</sup> As of July 14, 2000, the Respondent owed \$10,682.42 to the State of Connecticut and \$1,020 to the mother, assigned to the State. An arrearage finding has not been subsequently found.

<sup>26</sup> See Memorandum of Law in Support of Motion, dated March 1, 2006. No testimony or other evidence was introduced to support this assertion.

<sup>27</sup> Transcript, p. 8. However, no evidence was offered to support a claim of deviation due the needs of other dependents.

<sup>28</sup> G.L. § 46b-172 mandates that if paternity is disestablished, the state must refund all monies paid by the disestablished father to the State for past assistance the State provided to the child.

<sup>29</sup> Transcript, pp. 23-26. If a paternity action was initiated against the biological father, liability for past due support would be limited to 3 years prior to the filing of the paternity petition. G.L. § 46b-160. Should the biological father admit paternity pursuant to an acknowledgment of paternity, pursuant to G.L. § 46b-172, a support petition for past due support would be limited to 3 years prior to the filing of the support petition, pursuant to Public Acts 2006, No. 06-149, effective June 6, 2006, subsequent to the hearing before this court.

this child unless it was unable to collect the amounts from the *mother* pursuant to the State's collection remedies.

If the Respondent father was employed during the paternity proceedings where pending, and he had the ability to pay for the genetic testing, his child support order should have been based upon his actual known earnings. In such circumstances, the default order of \$102 would appear unreasonable and unfair, unless the father had a net income in excess of \$403, after consideration for any imputed support obligation for his oldest child.<sup>30</sup> If the father was not employed and had no earnings, then the State should have paid for the genetic testing. Thus, either scenario portrays an unfair and inequitable disposition. Like so many other non-custodial parents, unable to pay their child support orders, this father, for financial reasons only, seeks to disestablish his paternity with the child.<sup>31</sup> Fathers have found inconsistent response to the defense of non-paternity to burdensome financial support obligations.<sup>32</sup>

A number of states have responded to the disestablishment claims by allowing an adjudicated father release of all obligations- financial, and emotional- solely based on biology. The theory is that if biology, alone, makes a father, then biology logically ends that duty.<sup>33</sup> Other states have addressed only the issue of whether the adjudicated or

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<sup>30</sup> Child Support and Arrearage Guidelines, effective August 1, 1999.

<sup>31</sup> One cannot underestimate the effect of recent availability of DNA on demand: test kits are easily available through internet, home delivery and popular daytime television shows, for @ \$100. The father and child need only be tested. The mother need not participate to provide a scientifically reliable result.

<sup>32</sup> A number of articles have been authored tracking the various state legislative and judicial treatment of disestablishment. Paula Roberts has authored a 3 part series, with updates, entitled "Truth and Consequences, Parts I, II, II, at the Center for Law and Social Policy (CLASP) website, at [www.clasp.org](http://www.clasp.org), and published at vol. 57 of the Family Law Quarterly, pp. 35-103 (Spring 2003). Updates have been published subsequently, with the most recent updated Memorandum dated June 2006.

<sup>33</sup> In "Truth & Consequences: Part III Who Pays When Paternity is Disestablished", by Paula Roberts, April 2003, at least 7 states were identified that granted the courts specific authority to abate future support obligations if paternity was disestablished. See page 2 and Appendix A, identifying the following states that have, by statute, addressed support obligations when paternity is disestablished: Arkansas (mandatory relief), Georgia (allows prospective relief), Illinois (discretionary relief from future support obligations),

acknowledged parent has the right to disestablish based on biology, alone, leaving the courts to determine the appropriate support obligations of the parents. One such state is Maryland.<sup>34</sup> In *Langsten v Riffe*,<sup>35</sup> the state's highest court allowed three adjudicated fathers in consolidated cases, to set aside their paternity judgments based upon exclusionary genetic test results. All three consolidated cases sought disestablishment in defense to child support enforcement proceedings. The court held that the best interests of the child standard was irrelevant when DNA testing excluded the legal fathers as the biological fathers. *Id.* at 464. Similarly, in *Walter v Gunter*,<sup>36</sup> the court not only vacated a prior paternity judgment based upon genetic exclusion of paternity in defense to a collection action, but it vacated all prior financial arrearages. Thus, pursuant to Maryland statute, a judgment of paternity may be vacated based upon genetic exclusion. However, the court is left to determine the effect on the father's obligation to support.

Illinois statute allows an *adjudicated* father to challenge his paternity based upon genetic test results.<sup>37</sup> In response to a father's denial of his request to open a false judgment of paternity, the Alabama legislature passed a law allowing an adjudicated father to reopen the paternity judgment at any time with scientific evidence of non-

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Iowa (mandatory relief), Minnesota, Montana (discretionary relief) and Virginia (discretionary relief from current and future obligations). In addition, Ohio allows prospective relief by statute, 2000 Ohio Laws 238 (H.B. 242). California now allows a request for genetic testing or relief from an order if genetic testing proves non-paternity and relief from past as well as future obligations based upon non-paternity. Under the Uniform Parentage Act, adopted by four states, (Delaware, Texas, Washington and Wyoming) commencement of a paternity proceeding is limited to two years from the birth of a child, and a party is limited to two years post judgment to contest paternity. However, a child is not limited to the restriction if he/she was not represented or if the judgment is not supported by genetic testing. Unif. Parentage Act, 2002, as amended in 2002, § 607, 609, 637 and 308(a).

<sup>34</sup> MD. Ann. CODE § 5-1038.

<sup>35</sup> 754 A.2d 389 (Md. 2000).

<sup>36</sup> 788 A.2d 609 (2002).

<sup>37</sup> 750 Ill. Comp. Stat. 45/7 (b-5). Note, this statute applies to adjudicated paternities, only, and not voluntary acknowledgments that are equivalent to a judgment. *People ex. Rel. Dept. Of Public Aid v. Smith*, 797 N.E.2d 172 (Ill. 2004).

paternity.<sup>38</sup> Recently, California Legislature passed a law allowing a man to reopen his paternity judgment.<sup>39</sup> This legislative initiative came as a result of California's high rate of paternity default judgments and false identification of fathers.<sup>40</sup> Other states having recently enacted strong policies that favor vacating false paternity establishments include Ohio,<sup>41</sup> Tennessee<sup>42</sup> and Oklahoma.<sup>43</sup>

Maintaining the Judgment; preserving the family:

Historically, courts hesitated to disturb established presumptions or open judgments of paternity based upon the notion that the paternity judgment "preserved the family". The traditional family is no longer.<sup>44</sup> Approximately 1/3 of all children are born to unmarried parents.<sup>45</sup> Approximately 27 % of all children under the age of 21 reside with one biological parent, with the other parent residing elsewhere.<sup>46</sup>

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<sup>38</sup> ALA. CODE § 26-17A-1(2003).

<sup>39</sup> California Family Code § 7646, effective 1/1/05.

<sup>40</sup> Henry, p. 56, (citations omitted), citing California's paternity default rate of 68%; Los Angeles County reporting a 80% default rate.

<sup>41</sup> Ohio Rev.Code Ann. § 311.13, 311.37, and 3113.211.

<sup>42</sup> *Granderson v Hicks*, Court No. 02A01-9801-JV-00007, 1998 WL 886559 at \* 3 (Tenn.Ct. App. Dec. 17, 1998). ("We believe that all common law presumptions relating to paternity and legitimacy are rebuttable and the public policy has now been established by the general Assembly that true parentage is the end that should be pursued by the courts in paternity actions")

<sup>43</sup> *Barber v Barber*, 77 P.3<sup>rd</sup> 576 (Okla 2003). The Appellate court allowed an acknowledged father to contest his paternity within a two year statutory period. In so holding, the court said that it was not able to apply equitable principles, including the 'best interests of the child standard', in paternity cases involving a man who is not the biological father.

<sup>44</sup> Connecticut Supreme Court has also recognized that, for purposes of third party custody and visitation determinations, "[t]raditional models of the nuclear family have come, in recent years, to be replaced by various configurations of parents, stepparents, adoptive parents and grandparents, and we should not assume that the welfare of children is best served by a narrow definition of those whom we permit to continue to manifest their deep concern for a child's growth and development. *Michaud v. Wawruck*, 209 Conn. 407, 415, 551 A.2d 738 (1998)." (Internal quotation marks omitted.) *Doe v. Doe*, 244 Conn. 403, 442, 710 A.2d 1297 (1998).

<sup>45</sup> Henry, p.53, note 9, citing Subcommittee on Human Resources, Committee Ways and Means, United States House of Representatives, June 28, 2001; US Department of Commerce, Census Bureau, July 2006; See also "Custodial Mothers and Fathers and Their Child Support: 2003, p. 2 (30.5% of custodial mothers have never been married. An additional 45.9 % of the custodial mothers are currently divorced or separated, thus approximately 76% of custodial mothers are 'single parents'.)

<sup>46</sup> US Department of Commerce, Census Bureau, July 2006 : "Custodial Mothers and Fathers and Their Child Support: 2003", p. 2, reporting that of the total 81 million children under the age of 21 living with families, 21.6 million of those children reside with only one custodial parent (26.7%).

In a well reasoned, critical analysis of the benefits afforded a minor child as a result of maintaining a paternity judgment after it is learned that the legal father is not the biological father, the Court in *Tina v Christopher*, FA No. 94-0119611, (Colella, F.S.M., Dec. 15, 2001) denied the father's motion to open. In a thoughtful analysis, the court reasoned that:

“These types of cases are difficult to address, given the many emotional and financial competing interests of all the parties. However, no issue is more important than the issue of what is in the best interests of the child, emotionally and financially. Perhaps the most profound legal decision that can be made during the life of a child is a determination (or subsequent termination) of paternity. The most obvious conclusion one draws from a review of Connecticut case law is that such decision must be made on a case-by-case basis.”<sup>47</sup>

The conduct of the parents, thereafter, is not part of the case history. Shortly after the conclusion of the case proceedings, the legal adjudicated father filed a proceeding to terminate his parental rights with the probate court (literally, next building down the street). Neither the State nor the mother objected to the termination request and on May 14, 2003, the Probate Court terminated the legal, non biological father's parental rights and obligations. On August 25, 2003, the mother and the State caused to be filed a second paternity proceeding against the biological father. Over objection of the biological father, a second paternity judgment was entered. The mother sought, and was granted child support and arrearage for past due child support.<sup>48</sup>

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<sup>47</sup> *Tina C. v Christopher H.* Superior Court, J.D. of Waterbury, Docket No FA94-0119611 (Dec. 15, 2001, Colella, F.S.M.) The Decision was upheld on appeal, *Colangelo v Hunter*, FA94-0119611 (Leheny, J. April 17, 2002).

<sup>48</sup> *Colangelo v Loftis*, Superior Court, J.D. Waterbury, FA03-0180379, (Decision, Colella, F.S.M. 8/13/04 denying motion to dismiss on grounds of *res judicata*) and Judgment of Paternity, entered on 3/11/05 (Wihbey, F.S.M.).

It cannot be disputed that providing stable and predictable parental relations provide social, economic and emotional benefits to a child.<sup>49</sup> Maintaining a judgment of paternity may provide stability, security or foster an existing paternal relationship to a child, and such a goal is idealistic. However, to what extent can the courts preserve family unity when the parents themselves fail to do so, and should biology control the formation of family? If a bright line biology test is the only litmus for determination for the award of rights and obligations of parenthood, what consideration is given to the emotions and psychological well being of the child. Therefore, absent statutory or Appellate Court direction, this Court believes that it must consider the genetic biology in determining the rights and obligations of the parties in balance with the best interests of the child.

Often the analysis is such that if the legal non-biological father provided financial support to the child or emotional stability, the best interests of the child prevented him from re-opening the paternity judgment. However, such analysis, alone, may function to “punish” those that have honored the judgment of paternity and accepted responsibility under an involuntary adjudication. In essence, the court would be requiring a non-biologic parent to an obligation that was created by the court based upon erroneous information; specifically that he was the biologic parent. Then, the non-biologic parent is denied relief from the judgment because he followed the court’s order and provided support to the child. If the adjudicated father fails to honor the legally imposed financial

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<sup>49</sup> See also *Godin v Godin*, 725 A2d at 904 (Supreme Court of Vermont) and *In re paternity of Cheryl*, 746 N.E.2d at 488 (Supreme Court of Mass.) In each seminal case the highest state court refused to vacate prior paternity judgments based upon the best interests of the child that outweighed the non-genetic link to the adjudicated father.

obligations, (or morally acknowledged emotional responsibilities) he might be released from the judgment because there is no measurable loss to the child.

Conversely, if a putative father fails to avail himself of the opportunity, and his right to participate in genetic testing *prior* to judgment, he must be held to the consequences of his knowing and voluntary waiver of this important right. Absent extraordinary circumstances, such as fraud, duress or mistake, he should not be allowed to disestablish paternity based upon subsequently performed genetic testing at the detriment of others, specifically the child. This would undermine the judgment and encourage dilatory conduct.

Therefore, this Court believes the proper analysis considers (1) the genetic information available and (2) the past relationship of the involuntarily adjudicated father and child and (3) the child's future interests in knowing her parental biology, for example medical need to know parentage; ability to identify and develop a relationship with biologic parent, future legal rights such as inheritance, life insurance benefits, social security benefits, possible sibling relationships and (4) the child's ability to receive emotional and financial support from her biologic father and (5) any potential harm that the child may be caused to suffer by disturbing the paternity judgment, including loss of parental relationship, and loss of financial support.

In the present action, the adjudicated father is not the biologic father. He has assumed the role of non-custodial father and developed a stable relationship with the child. The child knows and understands the respondent to be her father and enjoys a relationship with her paternal family. However, if the judgment was disturbed, the child

would continue to enjoy the familial relationship with the parental family as such are also related through the mother's family.

There is little doubt that the child might be confused by the disclosure that her step father is her biologic father and that her father has no genetic link to her. However, this court must place faith in the judgment of the parents to protect the child, and that any such disclosure would be made in a supportive and nurturing fashion, at an appropriate time. This child will not be rendered fatherless. Her step father has been providing for her and has lived in her household. Should he be determined to be the biologic father, it is not as disruptive as a stranger entering into her life.

More significantly, given that the father has past a fatal genetic disorder to his children, this child has the right to know her true genetic history. It may not be prudent to discuss such matters with a child of such tender years, but to pretend that maintaining the paternity judgment will prevent her from knowing her true parentage is not realistic. However to vacate the paternity judgment at this time would disrespect the obligation to the child that the father has honored and, at best, be disruptive to the child. If either parent or the child believes that at some future point it is appropriate to terminate the father's rights and obligations, they are not precluded from filing the appropriate proceeding with the probate court. Such termination would allow a court to order the biological father to financially support the child.

Similarly, it is unfair and unjust to force the father to continue to financially support this child. Likewise, it is unfair and unjust that the State will be unable to recoup the prior financial assistance provided to Essence as a result of the mistaken determination of paternity. This judgment was entered as a result of both parent's

conduct; the mother in failing to identify her lack of exclusive sexual relations with the respondent, and the father for his failure to participate in the earlier paternity proceedings by undergoing genetic testing prior to judgment. This Court recognizes that there must be a consequence to such conduct.

The issue of a party's support obligation in the presence of genetic evidence of non-paternity impacts a determination of the child's financial best interests. In Connecticut, General Statutes section 46b-172 requires that the father be reimbursed monies he made to the State upon a subsequent determination of non-paternity. Nine states, by statute require that if the paternity is disestablished, current and future support obligations are terminated.<sup>50</sup> In a recent New Jersey Appellate decision, the Court ordered a non-biological adjudicated father to pay one half of the calculated child support obligation and the biological father was ordered to pay the remaining half of the child support obligation.<sup>51</sup>

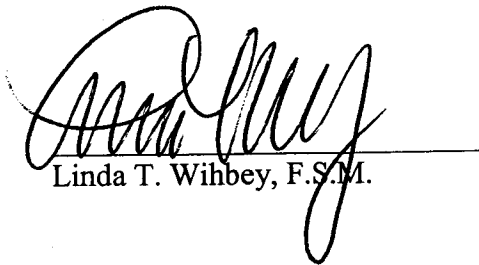
In consideration of the foregoing, the Respondent's Motion is granted, in part, as follows: The respondent father is presently estopped from denying his paternity of the child Essence, however, he no longer has a continuing obligation to provide current financial support for the benefit of this child. Pursuant to Reg. of Connecticut State Agencies, §46b-215a-3(b)(6)(D), a deviation in the current support obligation is found to be warranted based upon other equitable factors, as more specifically set forth above and the current order of support is reduced to zero (\$0) dollars per week, effective date of service ( Oct. 27, 2005). The father shall pay \$35. per week towards the accumulated

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<sup>50</sup> Arkansas, California, Georgia, Illinois, Iowa, Minnesota, Montana, Ohio, Virginia Two states, by statute, require that past due support be deemed satisfied or extinguished. (Alaska and Iowa). *See* note 33, *supra*.

<sup>51</sup> J.R. v L.R., Superior Court of New jersey, Appellate Division, docket # A-4471-0472, July 17, 2006.

past due support, to be administratively calculated and adjusted based upon the effective date of this order. The Order shall be secured by an immediate wage/income withholding Order.



Linda T. Wihbey, F.S.M.